

Chapter 41

SUBDIVISIONS—GENERALLY*

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ARTICLE I. IN GENERAL

Sec. 41-1. Other provisions.

To the extent of any conflict between any of the terms and provisions of this chapter and any of the terms and provisions of chapter 42 of this Code, the terms and provisions of chapter 42 shall control.

Sec. 41-2. "Private street" defined.

(a) For the purposes of this chapter, the term "private street" shall mean and include any area, parcel, or strip of land whether or not the same is depicted or shown as such on any plan, map, or drawing, and which is not a duly dedicated and established public street of and in the city, which provides access from any public street in the city to any building or buildings designed or appropriate for occupancy by four (4) or more families, or for occupancy or use by two (2) or more businesses, industrial or commercial establishments, or for occupancy and use by one or more industrial, commercial or business establishments and two (2) or more families, and to which buildings there is no other access from such public street than over the area, strip, or parcel of land in question.

(b) The term "private street," as used in this chapter, shall also include any area, strip, or parcel of land whether or not the same is depicted or shown as such on any map, plan, or plat, which provides a connection between any two (2) public streets in the city, and which the general public is permitted to use for the purpose of traveling from one of such public streets to the other. Under this

definition, the public shall be considered as being permitted to so use such area, strip, or parcel of land if in fact it does so and its use is not obstructed by gates, chains, or watchmen. The mere facts that there may be posted signs prohibiting such use by the public shall not suffice to keep the area from being considered a private street under the terms of this chapter if in fact the owner thereof does not take and continue to take sufficient steps to actually prevent such use.

(c) Notwithstanding the foregoing definitions, the following shall not be considered "private streets" within the purview of this chapter:

- (1) Any driveway designed principally to provide access to the outbuildings appurtenant to any principal building, or to provide access to delivery platforms or the entrances of a building appropriate for the delivery thereto of goods or merchandise.
- (2) An area appurtenant to a store or a group of stores, a theater, a church or any similar establishment, designed primarily to be used as a parking space by customers or patrons of the establishment or group of establishments in question.
- (3) An entranceway or roadway designed to provide entrance to or communication or passage between the several units of a single industrial establishment or of a group of such establishments which are under common control or management; provided such industrial entranceway or roadway shall be considered a private street under the terms of this chapter if it

*Cross references—Buildings, Ch. 10; flood-prone areas, Ch. 19; piers in or adjacent to unapproved subdivisions at Lake Houston, § 23-35; permit for private street work in subdivisions in advance of plat approval, § 40-67 (see also § 40-70); manufactured homes and recreational vehicles, Ch. 29; planning and development generally, Ch. 33; piers prohibited in unapproved subdivisions, § 23-35; subdivisions security organizations, § 34-151 et seq.; installation of street lights at expense of property owner, § 40-3.

has entrances upon two (2) or more public streets, unless there are, at each of such entrances, gates, chains, or watchmen by which all persons are prevented from using the same except those employed by or having business to conduct or such industrial plants or establishments in question.

(Code 1968, § 42-1)

Secs. 41-3—41-7. Reserved.

Editor's note—Ord. No. 99-262, § 7, adopted March 24, 1999, repealed §§ 41-3—41-7 in their entirety. Formerly, said sections pertained to direction of planning commission; compliance with rules; filing fees; withholding city improvements until platting approved; compliance prerequisite to city work on streets. See the Code Comparative Table.

Sec. 41-8. Compliance with chapter prerequisite to issuance of building permits and sewer and water connections.

In every instance in which application is made to the building official for a building permit for the construction of any building to which there does not appear to be reasonable access to a public street of the city except over a private street, he shall refuse the building permit until it is established to his satisfaction that the area or development in question is not subject to the provisions of this chapter or until he is furnished satisfactory proof that the provisions of this chapter have been complied with. Similarly, no permit shall be granted by him for any sewer installation or the connection of any sewers to any of the city's sanitary sewer lines or to lines discharging into any of the city's sanitary sewer lines, where it appears that the area or development is subject to the terms of this chapter, until he is satisfied that the provisions hereof have been complied with. Likewise the city's water division will permit no connection to the city's water lines for service to any improvements within any area or development which is subject to the terms of this chapter, until the provisions hereof have been complied with.

(Code 1968, § 42-7; Ord. No. 90-635, § 127, 5-23-90)

Secs. 41-9, 41-10. Reserved.

Editor's note—Ord. No. 94-1154, § 5, repealed former §§ 41-9 and 41-10, which pertained to the city as party to suit to enjoin or abate recorded restricts affecting subdivisions and limitations on the same, respectively.

Sec. 41-11. Notice of deed restrictions upon conveyance of property.

(a) In this section the following words and terms shall have the meanings herein ascribed:

(1) *Deed restrictions* shall have the meaning ascribed to the word "restriction" in Section 230.002 of the Local Government Code, as amended, provided that it shall not be deemed to include any restrictions that by their express provisions have terminated or any provisions contained within any restrictions to the extent and only to the extent that the provisions restrict the sale, rental, or use of property on the basis of race, color, religion, sex or national origin.

(2) *Sale or conveyance* means any transfer of any lot, tract or parcel of real property subject to deed restrictions that is situated in whole or in part within the corporate limits of the city, except:

- a. A conveyance by trustee's or substitute trustee's deed to the lienholder pursuant to a foreclosure sale;
- b. A conveyance by deed to the lienholder in full or partial satisfaction of a debt secured by the property conveyed;
- c. A deed of trust conveyed to secure a lien;
- d. An auction sale conducted by a public official pursuant to an order of a court of competent jurisdiction; or
- e. A conveyance in which the purchaser is a governmental entity.

Without limitation, the term shall include an executory contract of purchase and sale having a performance period of more than six months.

(3) *Purchaser* shall mean each person who constitutes a grantee, purchaser, buyer, or transferee in a sale or conveyance, regardless of the amount or nature of the consideration received.

(4) *Seller* shall mean each person who constitutes a seller, grantor or transferor in a

sale or conveyance, regardless of the amount or nature of the consideration received.

(b) It shall be the duty of each seller to ensure that each buyer receives, in connection with each sale or conveyance, notice issued in accordance with the terms of this section in the form of Exhibit A to Ordinance No. 89-1312 which exhibit is incorporated herein by reference. The following procedure shall be followed in the giving and recording of the notice:

- (1) The notice shall be given to each purchaser at the final closing of the sale and purchase; provided, however, seller may provide the notice prior to closing;
- (2) Each seller and each purchaser shall sign and acknowledge the notice; and
- (3) Following the execution, acknowledgment and closing of the sale and purchase, the notice shall be recorded in the real property records of the county in which the property is located.

(c) The failure of any seller to comply with this section shall constitute a misdemeanor punishable upon conviction by a fine of not more than \$500.00. Each person who constitutes a seller shall be criminally responsible and each sale or conveyance for which the seller has failed to comply with this section shall constitute a separate offense.

(Ord. No. 89-1312, § 2, 9-20-89)

Secs. 41-12—41-33. Reserved.

ARTICLE II. NAMING PRIVATE STREETS

Sec. 41-34. Approval by planning commission.

In those instances where subdivision plats or any other type of plat required to be submitted to and approved by the planning commission which may contain private streets, as that term is defined in section 41-1 of this Code, the planning commission is hereby authorized to approve the designation of street names upon private streets contained on such plats. Nothing herein shall be

construed to mean, however, that names shall be designated or required to be designated on such private streets by the planning commission. The naming of such private streets shall be in conformance with the duly adopted rules and policies of the planning commission pertaining to the naming of public streets and subject to such additional rules and standards as provided for herein.

(Code 1968, § 42-24; Ord. No. 77-652, § 1, 3-29-77; Ord. No. 95-104, § 1, 1-25-95)

Sec. 41-35. Approval by the city council.

(a) In those instances where the owners of property containing existing private streets desire to establish an official name for such existing private street or streets which are located within the confines of said property, such owners may submit a written petition to the director of the planning and development department requesting the city council to officially adopt an ordinance establishing such name on the subject private street or streets. Such written petitions shall be signed by not less than a majority (51 percent) of the property owners along the subject private street concurring in the proposed name to be established for such private street and shall be accompanied by:

- (1) A current title report, statement or opinion, title policy or certificate or letter from a title guaranty company or a licensed attorney certifying that the owners listed on the subject petition are in fact all the current owners of record having a legal interest in said private street (lienholders excluded) and represent not less than a majority (51 percent) of the property owners along the subject private street;
- (2) A written metes and bounds description of the property occupied by such private street; and
- (3) A boundary survey map of the property occupied by such private street, said survey map showing all engineering and survey data prepared by an engineer or surveyor and sufficient to accurately locate said private street on the ground. Such survey map must also be prepared in

conformance with the official survey system as provided for in division 2 of article III of chapter 33 of this Code.

(b) The director of the planning and development department shall review all such petitions and forward his written recommendations to the mayor and city council for their approval. The director of the planning and development department shall also maintain a permanent record of all such petitions and upon final passage of an appropriate ordinance by city council approving and establishing a name for a private street, such name shall be entered into all appropriate records of the city. No private street name shall be approved or established for an existing private street by action of the city council unless such name is in conformance with the duly adopted rules and policies of the planning commission pertaining to the naming of public streets and subject to such other additional rules and standards as provided for herein.

(Code 1968, § 42-25; Ord. No. 77-652, § 1, 3-29-77)

Sec. 41-36. Changes of existing private street names.

No private street name duly established under the terms and conditions of this article shall be changed, whether established by plat approved by the planning commission or by action of the city council, unless such change is approved by a majority (51 percent) of the property owners adjacent to such private street (lienholders excluded). The city council or the planning commission may approve a change in the name of any duly established private street if such change is in conformance with the provisions of this article.

(Code 1968, § 42-26; Ord. No. 77-652, § 1, 3-29-77)

Secs. 41-37, 41-38. Reserved.

Editor's note—Ord. No. 99-262, § 7, adopted March 24, 1999, repealed §§ 41-37, 41-38, in their entirety. Formerly, said sections pertained to private street naming standards; installation and maintenance of private street marker. See the Code Comparative Table.

Secs. 41-39—41-49. Reserved.

ARTICLE III. REGULATION OF TOWERS

Sec. 41-50. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed below, unless the context of their usage clearly indicates another meaning:

Alteration means any modification, replacement, or reconstruction that increases the height or materially increases the dimension of a tower structure.